

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RICKIE HILL,

Plaintiff,

v.

J. RUTLEDGE et al.,

Defendants.

Case No. 3:20-cv-00495-MMD-WGC

ORDER

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on July 15, 2021. (ECF No. 3). The screening order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 3, 7). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 13).

Plaintiff filed two motions to apprise (ECF Nos. 8, 10). The Court denies the motions to apprise. In those motions, Plaintiff appears to be asserting mail issues at the prison. If Plaintiff is attempting to raise new claims based on mail issues, he needs to initiate a new lawsuit on those issues. The Court further notes that those motions were filed in violation of the stay. (See ECF No. 3 at 8).

Plaintiff also filed a motion for appointment of counsel (ECF No. 9) in violation of the stay. A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent

1 civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970
2 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’
3 exist, a court must consider ‘the likelihood of success on the merits as well as the ability
4 of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
5 involved.” *Id.* “Neither of these considerations is dispositive and instead must be viewed
6 together.” *Id.* In the instant case, the Court does not find exceptional circumstances that
7 warrant the appointment of counsel. The Court denies the motion for appointment of
8 counsel without prejudice.

9 For the foregoing reasons, **IT IS ORDERED** that:

10 1. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 1) is
11 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
12 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
13 U.S.C. § 1915(b)(2).

14 2. The movant herein is permitted to maintain this action to conclusion without
15 the necessity of prepayment of any additional fees or costs or the giving of security
16 therefor.

17 3. Pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform
18 Act, the Nevada Department of Corrections will forward payments from the account of
19 **Rickie Hill, # 87052** to the Clerk of the United States District Court, District of Nevada,
20 20% of the preceding month’s deposits (in months that the account exceeds \$10.00) until
21 the full \$350 filing fee has been paid for this action. The Clerk of the Court will send a
22 copy of this order to the Finance Division of the Clerk’s Office. The Clerk will send a copy
23 of this order to the attention of **Chief of Inmate Services for the Nevada Department**
24 **of Corrections**, P.O. Box 7011, Carson City, NV 89702.

25 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
26 a copy of Plaintiff’s complaint (ECF No. 4) on the Office of the Attorney General of the
27 State of Nevada by adding the Attorney General of the State of Nevada to the docket
28 sheet. This does not indicate acceptance of service.

1 5. Service must be perfected within ninety (90) days from the date of this order
2 pursuant to Fed. R. Civ. P. 4(m).

3 6. Subject to the findings of the screening order (ECF No. 3), within twenty-
4 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
5 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
6 accepts service; (b) the names of the defendants for whom it does not accept service,
7 and (c) the names of the defendants for whom it is filing the last-known-address
8 information under seal. As to any of the named defendants for whom the Attorney
9 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
10 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
11 information. If the last known address of the defendant(s) is a post office box, the Attorney
12 General's Office shall attempt to obtain and provide the last known physical address(es).

13 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
14 shall file a motion identifying the unserved defendant(s), requesting issuance of a
15 summons, and specifying a full name and address for the defendant(s). For the
16 defendant(s) as to which the Attorney General has not provided last-known-address
17 information, Plaintiff shall provide the full name and address for the defendant(s).

18 8. If the Attorney General accepts service of process for any named
19 defendant(s), such defendant(s) shall file and serve an answer or other response to the
20 complaint (ECF No. 4) within sixty (60) days from the date of this order.

21 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
22 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
23 document submitted for consideration by the Court. If Plaintiff electronically files a
24 document with the Court's electronic-filing system, no certificate of service is required.
25 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
26 mails the document to the Court, Plaintiff shall include with the original document
27 submitted for filing a certificate stating the date that a true and correct copy of the
28 document was mailed to the defendants or counsel for the defendants. If counsel has

1 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
2 named in the notice of appearance, at the physical or electronic address stated therein.
3 The Court may disregard any document received by a district judge or magistrate judge
4 which has not been filed with the Clerk, and any document received by a district judge,
5 magistrate judge, or the Clerk which fails to include a certificate showing proper service
6 when required.

7 10. This case is no longer stayed.

8 11. The motions to apprise (ECF Nos. 8, 10) are denied.

9 12. The motion for appointment of counsel (ECF No. 9) is denied without
10 prejudice.

11 DATED: October 15, 2021.

12
13 *William G. Cobb*

14 UNITED STATES MAGISTRATE JUDGE
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